IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3648 OF 2006

Smt.Vatsala Appasaheb
Khot & Ors. .. Petitioners.
Vs.
Shri Bhushan Chandrakant
Shah & Ors. .. Respondents.

Mr.T.S.Ingale for the petitioners.
Mr.Neel G.Helekar for respondent no.1.
Mr.Vijay Killedar for respondent nos.2 and 3.

CORAM : D.B.BHOSALE, J.

DATED : 11TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioners, respondent no.1 and respondent nos.2 and 3.

2. The petitioners have impugned the order dated 27.4.2006 by which their application at Exhibit-45 under Order I Rule 10 of the Code of Civil Procedure has been rejected.

3. The petitioners sought their impleadment in the suit solely on the ground that they have obtained a decree of specific performance of an agreement dated 17.9.1993 in respect of the same property. Admittedly, the said decree was contingent, depending upon the outcome of the present suit, being regular civil suit no.536 of 2000. The court below has

rejected the application for the reasons recorded in paragraph 6 and 7. The relevant observations reads thus:

> "6. Thus, Decree was contingent, depending upon fate of this suit. In case, if the present suit is Decreed, then the decree of Spl.C.S.No.230/1999 goes away and third party who are plaintiffs in that case are entitled to claim earnest amount only from the Savant brothers. Equally, if the present suit came to be dismissed on merit and dismissal attains finality then the Decree of Spl.C.S.No.230/1999 stands as it is and will have to be executed. In concluding part of the operative order the Hon'ble Court in clear terms has restricted the Third party/Plaintiffs from the impleading themselves as a party to this suit. It means, the legal right, title and interest of third party have been already decided and carved out by the Court of competent jurisdiction. Their same interest is made contingent upon the decision of this suit. At the same time, Court restricted them from getting impleaded as a party to this proceeding. It is nobody's contention that the said Decree of Spl.C.S.No.230/1999 is assailed before Appellate Court and execution operation thereof stayed. In absence of such material before this Court, it cannot be said that third party has got right to ask such relief of impleading themselves as a party to the proceeding even by invoking provisions of Order 1 Rule 10 of C.P.C. No-doubt, anybody can join the proceeding if his presence is necessary to decide the point of controversy effectively and completely.
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> 7. However, as discussed above, whatsoever interest of third party in the suit land have been already decided by Court of competent jurisdiction. Therefore, now they have no locus standi to ask for such relief. Consequently, their presence if also not necessary before this Court to decide the point of controversy. In view of all these circumstances, I am of the view that application is devoid of merit and deserves to be rejected. Accordingly, it is rejected."

4. Admittedly, the agreement involved in the present proceedings was executed much prior to the Agreement which was the subject matter of the suit filed by the petitioners for specific performance of the said Agreement. The date of agreement in the present suit is 29.5.1990, whereas the Agreement in the petitioners' suit was dated 17.9.1993. The only submission advanced by Mr.Ingale, learned counsel for the petitioners was that there is possibility of collusion between the plaintiffs and defendants in the present suit to defeat the petitioners right to get the decree executed. This apprehension is expressed for the first time in the writ petition. No such apprehension was expressed before the trial Court. Be that as it may, I am satisfied that since the suit is based on the agreement of sale, the petitioners in whose favour some interest has been created subsequently, by virtue of the decree of the court, in any case, is not the matter arising out of or in respect of the same transaction in relation to the prayer made in the suit and, therefore, he is neither necessary nor proper party in the present proceedings. I am fortified in the aforesaid view by decision of the Supreme Court in **International Airport Authority of India & Ors. Vs. Grand Slam International & Ors. (1995) 3 SCC 151**. In the result this petition is dismissed.

(D.B.Bhosale, J.)